Court of Appeals, State of Michigan

ORDER

David L. Schreur v Ronald B. Miller

Docket No. 254361

LC No. 01-029793-CH

Michael R. Smolenski
Presiding Judge

William B. Murphy

Alton T. Davis
Judges

On the Court's own motion, we GRANT reconsideration and the opinion issued September 27, 2005, is hereby VACATED. A new opinion will be forthcoming.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 18 2005
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

DAVID L. SCHREUR, SARA E. SCHREUR, DANIEL BIRKBECK, and HOLLY BIRKBECK, Plaintiffs-Appellees,	UNPUBLISHED September 27, 2005
v	No. 254361 Allegan Circuit Court
ROBERT L. DEJONG and MARY JO DEJONG, Defendants-Appellants.	LC No. 01-029793-CH

Before: Smolenski, P.J., and Murphy and Davis, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's judgment quieting title to a four-foot wide strip of land ("walkway") in the Lakeside Addition of Macatawa Park plat in favor of plaintiffs. The trial court found that plaintiffs acquired title to part of the walkway, approximately twenty feet, by virtue of adverse possession and that plaintiffs also acquired title to the walkway consistent with two 1989 deeds transferring title to plaintiffs. The trial court additionally ruled that, as between plaintiffs and defendants, plaintiffs have a superior right to the walkway encompassed in the two deeds. We affirm the court's ruling relative to the adverse possession determination but reverse and remand on the matters regarding superior title and private dedication (easement interests).

We first address defendants' argument that the trial court erred in finding that plaintiffs adversely possessed more property than that which their house encroached on.

In a bench trial, this Court reviews a trial court's findings of fact for clear error and its conclusions of law de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003), citing MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). When reviewing an equitable determination reached by a trial court, this Court reviews the trial court's conclusion de novo, but the trial court's underlying findings of fact are reviewed for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998); see also *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001)(quiet title actions are equitable and the court's holdings thereon are reviewed de novo). In general, "[f]indings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court

on the entire record is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

To support a claim for adverse possession, plaintiffs were required to show that during the fifteen-year statutory period they had actual, visible, open, notorious, exclusive, and uninterrupted possession of the property that was hostile to the owner and under cover of a claim of right. *Rozmarek v Plamondon*, 419 Mich 287, 295; 351 NW2d 558 (1984)(citation omitted).

Plaintiffs' house encroaches on the walkway a few inches and has since 1970 when they purchased it. Also, their deck now covers the walkway almost completely in one area, yet this deck was not built until 1990 according to the proofs. However, there was testimony presented showing that, before this particular deck was built, stairs and a wooden walkway encroached on the walkway at issue. Additionally, there was testimony of an earlier second-story deck that rested above the walkway. Further, there was evidence establishing that, beginning in 1970, plaintiffs landscaped the area, put up a fence blocking access for about ten years, and blocked access to the walkway with large pieces of cement in an attempt to preserve the land from being washed into the lake. Moreover, the testimony at trial supports the conclusion that the walkway was not actually used as a walkway for almost twenty years. The only testimony to dispute the claim was the testimony of one neighbor who stated that she and her family used a "path" near the area of the walkway to access the beach beginning in 1985. However, the witness could not verify whether she actually traversed the area of the walkway in question. Therefore, the evidence was sufficient to establish that plaintiffs had adversely possessed, minimally, and consistent with the court's ruling, the twenty-foot portion of the walkway adjacent to their house for the statutory period because they "exercised all control of these premises that reasonably could be expected in view of their character." *Pulcifer v Bishop*, 246 Mich 579, 584; 225 NW 3 (1929). Plaintiffs have not filed a cross appeal challenging the trial court's ruling with respect to the extent or length of the walkway acquired by adverse possession. Accordingly, we next address the remaining portion of the walkway outside the context of the doctrine of adverse possession.

With regard to the trial court's finding that plaintiffs have title to the walkway pursuant to the two 1989 deeds and that they have a superior right to the walkway because of the deeds, defendants argue that the court abused its discretion by failing to admit deeds offered by defendants in an attempt to establish that they, not plaintiffs, have superior title. We agree.

We first note, as pointed out by defendants, that pursuant to plaintiffs' complaint, they sought title to the stretch of walkway at issue solely under the guise of a claim for adverse possession. There was no assertion of title based on existing deeds. The mere claim of adverse possession suggested a belief that legal title did not rest with plaintiffs, otherwise there would be no need to seek refuge under the doctrine, although conceivably plaintiffs were attempting to extinguish all interests in the property, including any easement interests, through the mechanism of adverse possession. That being said, the trial court's need to determine whether plaintiffs established the elements of adverse possession within the context of an action to quiet title necessarily required the court to explore title issues regarding the walkway and surrounding property.

Generally, all relevant evidence is admissible, and evidence is relevant if it has any tendency to make the existence of a fact which is of consequence to the action more probable or

less probable than it would be without the evidence. MRE 401; MRE 402. A trial court's decision to exclude or admit evidence at trial is reviewed for an abuse of discretion. *Shuler v Michigan Physicians Mut Liability Co*, 260 Mich App 492, 508-509; 679 NW2d 106 (2004). An abuse of discretion exists only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no excuse for the ruling made. *Id.* at 509. The proponent of evidence bears the burden of establishing relevance and admissibility. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004).

In the present case, defendants attempted to establish that they had superior title to the walkway based on the recorded history concerning the walkway as reflected by various deeds. However, the trial court refused to admit the evidence. The deeds were date stamped and show that they were recorded by the Allegan County Register of Deeds; Liber and Page numbers are included. MRE 803(15) provides, in general, that recorded documents affecting an interest in property are not excludable as hearsay. Because the documents could establish a chain of title, which would be required to show superior title, the deeds were relevant to the litigation. Defendant was denied the opportunity to attempt to prove that he has superior title by the trial court's refusal to admit the deeds. We also note that plaintiffs' counsel stipulated on the record at the beginning of trial that he would not object on authenticity or foundation grounds with respect to the admission of any deeds proffered by defendants. All underlying deeds regarding the walkway are relevant for purposes of chain of title and establishing superior title, and they must be evaluated. Therefore, the trial court abused its discretion in failing to admit the evidence, and we remand for consideration of the evidence.[1]

On remand, we also direct the trial court to revisit the issue regarding the nature of the title. The judgment quiets title to the walkway in favor of plaintiffs via 1989 deeds between plaintiffs and Susan Kraai and Valley Properties Management Company, and the judgment then provides, as between plaintiffs and defendants, that plaintiffs have superior rights to the walkway because of the deeds. The trial court's written opinion states that there was no evidence that the walkway was dedicated to the use of the lot owners in the plat. The court then proceeds, however, to state that, even if such a private dedication occurred, nothing prevented one lot owner from transferring that right to another lot owner. The language utilized by the trial court in its written opinion suggests that the court found that plaintiffs have a fee simple interest in the walkway unencumbered by any easement,[2] thereby allowing plaintiffs full control of the walkway and providing them the legal right to bar any access by defendants. In the alternative, the trial court implicitly found that any easement interests were extinguished through the transfer of property interests as accomplished by the 1989 deeds, if one were to assume that a private dedication occurred. This suggests that the trial court believed that the deeds to plaintiffs from

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[1] We decline defendants' request that this panel find that they have superior legal title based on the documents submitted to us. The appropriate approach is to permit the trial court to reexamine its prior ruling taking into consideration the previously excluded deeds and the consent judgment between the Frobergs and Point West I.

[2] Defendants had argued that the walkway was subject to an easement enjoyed by all lot owners that arose by way of a private dedication contained in the recorded plat.

Valley Properties and Kraai transferred all legal title and easement interests in the walkway to plaintiffs.

A private dedication arises where a recorded plat provides that driveways, walks, alleys, parks, and other areas are dedicated to or can be used by owners of lots within the plat, and such dedication gives the lot owners an easement in the dedicated areas. *Little v Hirschman*, 469 Mich 553, 559; 677 NW2d 319 (2004), citing *Thies v Howland*, 424 Mich 282, 286; 380 NW2d 463 (1985). Private dedications are irrevocable upon sale of the lots and give the lot owners an irrevocable right or easement to use the privately dedicated land. *Little*, *supra* at 558-559, 562. The purchaser of platted lands receives not only the interest legally described in the deed, "but also whatever rights are reserved to the lot owners in the plat." *Id.* at 561 (citation omitted). The rights granted pursuant to a private dedication contained in a recorded plat may not be infringed upon by one lot owner to the detriment of fellow lot owners. *Id.* at 560 (citation omitted). A land owner "accepts" a private dedication when the property is purchased pursuant to a deed that references the plat. *Martin v Beldean*, 469 Mich 541, 549 n 19; 677 NW2d 312 (2004). "That is, purchasers of parcels of property conveyed with reference to a recorded plat have the right to rely on the plat reference and are presumed to 'accept' the benefits and any liabilities that may be associated with the private dedication." *Id.*

We first find that an easement to use the walkway in favor of all lot owners within the platted land did in fact arise out of the plat for the Lakeside Addition to Macatawa Park. Although words of a private dedication cannot be deciphered on review of the plat exhibit, the plat clearly designates and shows the existence of the walkway at issue. This is sufficient to give lot owners within the plat, as opposed to the general public, the right to utilize the walkway easement. This is so because this Court, in *Nelson v Roscommon Co Rd Comm*, 117 Mich App 125, 132; 323 NW2d 621 (1982), quoting *Rindone v Corey Community Church*, 335 Mich 311, 317; 55 NW2d 844 (1952), stated that "a grantee of property in a platted subdivision acquires a private right entitling him 'to the use of the streets and ways laid down on the plat, regardless of whether there was a sufficient dedication and acceptance to create public rights.'" (Internal quotations omitted). This language suggests that specific words of a private dedication are unnecessary to create such a dedication where the recorded plat clearly shows common areas like a road, walkway, or park. In *Little*, *supra* at 558, this Court stated:

> In *Schurtz v Wescott*, 286 Mich 691; 282 NW 870 (1938), this Court considered an 1891 plat that, while it dedicated the streets to the public, was silent with regard to the dedicated parks. We found, with respect to the parks, that any lot owner had the right to the use of the parks. 286 Mich 697.

In *Schurtz*, the plat included 112 lots and two parcels marked as "north park" and "south park." The opinion indicates that there were no words of dedication. The Supreme Court, quoting Dillon on Municipal Corporations (5th ed), § 1090, p 1737, stated, "'where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantee to the use of the streets and ways laid down on the plat . . . .'" *Schurtz*, *supra* at 695-696. Here, we find that the walkway *laid down*

on the plat created private easement interests to use the walkway on sale of the lots within the plat.[3]

Accordingly, contrary to the trial court's ruling, there was evidence that the walkway was dedicated to the use of the lot owners in the plat. As noted above, however, the trial court would still have found that any easement interests, assuming their existence, were subject to being transferred and thus extinguishable as to any particular lot owner and that a transfer occurred in the case at bar by virtue of the 1989 deeds. We disagree. Assuming, but in no way conceding, that an individual lot owner within a plat can transfer and thereby extinguish his or her particular easement interest that was created by a private dedication via a plat, the 1989 deeds do not reflect that easement interests were transferred. Rather, the deeds provide that only the legal title to the lands described therein was being transferred. The deeds say nothing regarding easement interests being transferred. To the contrary, the legal descriptions contained in both deeds conclude with the words, "according to the recorded plat thereof." Therefore, although legal title may have passed, the ownership transferred under the deeds was subject to the easement interests held by the plat's lot owners, including defendants, as created by the recorded plat.

We note that our analysis and holding regarding this issue and the issue of superior legal title do not change or impact our holding above with regard to adverse possession because defendants have simply not presented appellate argument on the interplay between these issues. For example, an immediate question that comes to mind, remembering that we have determined that an easement existed by way of private dedication, is whether one can adversely possess such an easement to the point that the easement interest is extinguished.[4] In *Nicholls v Healy*, 37 Mich App 348, 349; 194 NW2d 727 (1971), this Court stated that the "use of an easement by the owner of the servient estate will not ripen into adverse possession unless such use is inconsistent with the easement." Although the case, and the cases cited therein, support the proposition that an easement can be terminated by adverse possession, the cases do not address a situation where the easement was created by a private dedication through a recorded plat and in which the easement extends to all lot owners within the plat. Finding adverse possession in such a situation would seem contrary to the principles regarding private dedications as espoused in *Little*, *supra.* Regardless, we decline to address the issue because defendants do not raise the matter on appeal.

In sum, we affirm the trial court's ruling on adverse possession; therefore, plaintiffs have absolute title to the area encompassed by the court's ruling on adverse possession as specified in the judgment, which is not subject to any easement. Next, with respect to legal title only and that area of the walkway not touched by the court's adverse possession ruling, we remand for

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[3] In regard to the plat for Macatawa Park, our Supreme Court in *Unverzagt v Miller*, 306 Mich 260, 263; 10 NW2d 849 (1943), stated, "Defendant is the owner of the fee in highways, roads, streets and alleys in the park, subject to an easement and right of use by the owners of cottages and lots within the park."

[4] We find it evident from the trial court's ruling regarding adverse possession that the facts relied on by the court to issue its ruling were sufficient to find that any easement interests were also extinguished under the doctrine, assuming its applicability.

admission and consideration of defendants' previously rejected exhibits, i.e., various deeds, in order for the court to properly ascertain which party has superior legal title. Finally, regardless of any subsequent ruling on superior legal title to the walkway, the walkway, outside of the area dealt with in the court's adverse possession ruling, is subject to an easement that arose by virtue of the plat, which easement can be used by defendants.

Affirmed in part and reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ William B. Murphy
/s/ Alton T. Davis